



**citizens for responsibility  
and ethics in washington**

November 26, 2013

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

**By first-class mail**

**By facsimile (202) 566-2147**

**Re: Freedom of Information Act Request**

Dear Sir or Madam:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and Environmental Protection Agency ("EPA") regulations, 40 CFR § 2.107, Citizens for Responsibility and Ethics in Washington ("CREW") makes the following request for records.

First, CREW seeks any and all records dating from January 1, 2012 to October 31, 2013 relating to the neonicotinoid class of pesticides and their relationship to colony collapse disorder and the massive die-off of honeybees. Specifically CREW requests data provided to the EPA by pesticide manufacturers and distributors Bayer CropScience, Syngenta, Monsanto, Arysta, Valent USA, and Jansen as well as trade groups such as the National Corn Growers and the National Association of Wheat Growers, regarding pending legislation or rulemakings dealing with the neonicotinoid pesticides clothianidin and thiamethoxam.

Second, CREW seeks records that reflect any communications between any employee of the EPA and any employee of the aforementioned pesticide companies and trade groups regarding neonicotinoids from January 1, 2012 to October 31, 2013.

Third, CREW seeks records that reflect any communications between any employee of the EPA and any employee of the U.S. Department of Agriculture regarding neonicotinoids from January 1, 2012 to October 31, 2013.

Fourth, CREW seeks records that reflect any communications between any employee of the EPA and any member of the U.S. Senate or House of Representatives regarding regulation of the aforementioned pesticides from January 1, 2012 to October 31, 2013.

Please note that for each of these categories of requests, CREW is not seeking the contents of any proposed regulations or communications except to the extent they discuss or refer to the timing of the agency's submission to the EPA for review.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records,



audiotapes, videotapes, and photographs. Our request includes any letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to these records.

For any email, please produce metadata and/or headers that show the email address of the sender and any recipient in addition to their display name, the names and email addresses of any "bee" recipients, and any data regarding the time and date the email was sent, received, and/or opened.

If it is your position that any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the *Vaughn* index must "describe each document or portion thereof withheld, and for **each** withholding it must discuss the consequences of supplying the sought-after information." *King v. US. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Id.* at 224 (citing *Mead Data Central v. US. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *Mead Data Central*, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Finally, CREW welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the EPA to process it within the FOIA's deadlines. Anne Weismann, the CREW attorney handling this matter, can be reached at (202) 408-5565 or [aweismann@citizensforethics.org](mailto:aweismann@citizensforethics.org).

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a) (4) (A) (iii) and 40 C.F.R. § 2.107 (l) (2) (ii), CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government and expenditures, and the disclosures



will likely contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a) (4) (A) (iii). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

These records are likely to contribute to greater public awareness of and shed light on whether these pesticide companies are unduly influencing the EPA into making industry-friendly decisions that could ultimately harm the agricultural sector, the economy as a whole and even the nation's food supply. In July, U.S. Reps. John Conyers and Earl Blumenauer proposed the Saving America's Pollinators Act, a bill seeking to ban farmers from using neonicotinoids because of their deadly effects on bees. Several scientific studies have linked these chemicals to colony collapse disorder, a phenomenon in which entire beehives fail each year causing millions of bees to die. Colony collapse disorder poses a significant threat to the dozens of crops that need bees for pollination, however the pesticide industry vehemently denies their products are responsible for killing bees. According to Senate lobbying records, since the bill was introduced, the pesticide companies and industry groups have lobbied heavily on the bill. These groups have also been very active lobbying against similar regulations on a state level. The documents CREW seeks would shed light on this practice, especially as it relates to controversial decisions made by EPA officials.

CREW is a non-profit corporation, organized under section 501 (c) (3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW's financial interest. CREW will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org), which also includes links to thousands of pages of documents CREW acquired through its multiple FOIA requests as well as documents related to CREW's litigation and agency complaints, and through [www.scribd.com](http://www.scribd.com).

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

#### **News Media Fee Waiver Request**

CREW also asks that it not be charged search or review fees for this request because CREW qualifies as a "representative of the news media" pursuant to the FOIA and 40 C.F.R. § 2.107 (l) (2) (iii). In *Nat'l Sec. Archive v. US. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public...should qualify for waivers as a*



'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.*

CREW routinely and systematically disseminates information to the public in several ways. First, CREW maintains a frequently visited website, [www.citizensforethics.org](http://www.citizensforethics.org), that received 65,791 page views in October 2013. In addition, CREW posts all of the documents it receives under the FOIA on [www.scribd.com](http://www.scribd.com), and that site has received 2,775,782 visits to CREW's documents since April 14, 2010.

Second, since May 2007 CREW has published an online newsletter, *CREWCuts*, that currently has 16,368 subscribers. *CREWCuts* provides subscribers with regular updates regarding CREW's activities and information the organization has received from government entities. A complete archive of past *CREWCuts* is available at <http://www.citizensforethics.org/newsletter>.

Third, CREW publishes a blog, *Citizens blogging for responsibility and ethics in Washington* that reports on and analyzes newsworthy developments regarding government ethics and corruption. The blog, located at <http://www.citizensforethics.org/blog>, also provides links that direct readers to other news articles and commentary on these issues. CREW's blog had 6,201 page views in October 2013.

Finally, CREW has published numerous reports to educate the public about government ethics and corruption. See *Record Chaos*, which examines agency compliance with electronic record keeping responsibilities; *The Revolving Door*, a comprehensive look into the post-government activities of 24 former members of President Bush's cabinet; and *Those Who Dared: 30 Officials Who Stood Up For Our Country*. These and all other CREW's reports are available at <http://www.citizensforethics.org/reports>.

Based on these extensive publication activities, CREW qualifies for a fee waiver as a "representative of the news media" under the FOIA and agency regulations.

If you have any questions about this request or foresee any problems in releasing fully the requested records on an expedited basis please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination. Please email or send the requested records to Anne Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005; [aweismann@citizensforethics.org](mailto:aweismann@citizensforethics.org).

Sincerely,



Anne L. Weismann  
Chief Counsel